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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 269

JAMES BENONI, CLAIMANT,

Appellant,

vs.

BETHLEHEM-FAIRFIELD SHIPYARD, INCORPORATED, EMPLOYER, AND MARYLAND CASUALTY COMPANY, INSURER,

Appellees

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

Now comes James Benoni, appellant and claimant in this case, and petitioner for the allowance of an appeal from the final decision and judgment of the Court of Appeals of Maryland to the Supreme Court of the United States, and makes the following statement of the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the decision and judgment in question.

1. The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Judi-

cial Code, Section 237(a), as amended (January 31, 1928, c. 14, Sec. 1, 45 Stat. 54), the pertinent provisions of which are as follows:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal."

2. The Maryland statute, the validity of which, as judicially interpreted by the Court of Appeals of Maryland, and as amended by such judicial interpretation, and as applied and enforced in this case, is involved, is the "other cases" provision of the Workmen's Compensation Act of Maryland, Article 101, Section 48(3), Code of Public General Laws of Maryland, 1939 (Flack's 1943 Supp. to the Code, at p. 1144). As enacted, and effective on the date of appellant's injury, March 28, 1945, and applicable to this case, the provision (since amended by Laws of 1945, Ch. 336, and Laws of 1947, Ch. 895), reads as follows:

> "Other Cases—In all other cases in this class of disability the compensation shall be fifty per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment, or otherwise, if less than before the accident (but not to exceed eighteen dollars per week), payable during the continuance of such partial disability, but not to exceed three thousand dollars, and, subject to reconsideration of the degree of such impairment by the Commission on its own motion or upon application of any party in interest."

In construing that provision, and applying and enforcing it in this case, the Court of Appeals of Maryland referred

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to its discussion of the matter in its opinion in *Allen* v. *Glenn L. Martin Co.*, decided the same day as this case, wherein the Court said (52 A. 2d 605, 608, 610):

> "Appellant argues • • • that there should have been no limit less than $3,000 on the amount of permanent partial disability allowed. • • • that the Commission has the duty to determine the average weekly wage and the wage earning capacity and to fix the weekly payments at 50% of the difference between the two. • • • that the Commission has no power to limit the number of weeks as long as the permanent partial disability continues, and that the only limitation, unless there is a subsequent modification or death, is when the aggregate weekly payments reach the maximum fixed by the statute. He argues that to limit it otherwise is unconstitutional, • • •.
>
> "The statute under 'other cases,' and as interpreted by this Court, sets a maximum limit as to the amount of compensation to be allowed and gives to the Commission the right to determine the amount to be paid within this limit. • • •
>
> "In the case at bar, as the claimant was awarded the maximum weekly payment, there was no question of fact for the jury or for the court sitting as a jury on appeal. • • •
>
> "In effect, our construction of the 'other cases' provision is that the aggregate amount of compensation shall be determined in the discretion of the Commission, in each case having due regard to the character of the permanent partial disability, and the impairment of wage earning capacity therefrom, as compared with the scheduled cases of permanent partial disability specifically provided for."

In construing the "other cases" provision in *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc.* (1946), 47 A. 2d 365, the Court of Appeals of Maryland said (at pp. 370-371 of 47 A. 2d):

> "The precise point made by appellant is that the 'other cases' section requires payment 'during the con-

tinuance of such partial disability,' without any limitation except that such payments shall not exceed $3,000. * * * Whether the Legislature intended this or not, there is no means of ascertaining except by the words of the statute. The clear unambiguous words used seem to indicate that it did so intend, and if this were the first time this question was before this Court, we might so hold. The question now, however, is not so simple. It becomes an issue between the two doctrines of stare decisis on the one hand, and constitutional lack of authority in the Court to legislate on the other.

"It is interesting to note that in a number of jurisdictions and states, where similar clauses are in compensation acts, with a limitation, either as to amount, or as to number of weeks, the courts have held that there is no discretion to give less than the limitation. * * * On the other hand, * * * there are a number of states which, by statute, confer upon accident boards and commissions discretion to limit the amount or duration of such payments to a sum or period less than the maximum named. That is the effect of the prior decisions of this Court construing the 'Other Cases' section, which by judicial interpretation, reach the same result achieved in these other states by unequivocal statutory provisions."

In construing the same provision in *Miller* v. *McGraw Co.*, 184 Md. 529, the Court of Appeals of Maryland said (pp. 539-541):

"The preceding paragraphs under the same subsection, captioned 'Permanent Partial Disability,' deal with the loss, or loss of use, of specified members of the body and provide a schedule of compensation on a fixed weekly basis. It is to be noted, however, that the 'Other Cases' paragraph prescribes no such basis or schedule and gives no specific authority to the Commission to fix the number of weeks. * * *

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"Although the statute prescribes that these payments shall be made 'during the continuance of such partial disability' and the subsection we are now discussing pertains to the type of disability that is 'permanent,' thus indicating, if literally construed, that every claimant under the 'Other Cases' paragraph would ultimately get the limit of $3,000 compensation, this Court has not adopted such a construction. We have held that, in accordance with this paragraph, the State Industrial Accident Commission may fix the amount and the number of weekly payments, and set an aggregate sum less than the statutory limit of $3,000.

"* * * we hold that * * * the Commission may ascertain the amount of compensation on the basis prescribed in the 'Other Cases' paragraph of the statute, as hereinbefore construed, and may fix the number and amount of weekly payments, not to exceed, however, the sum of $3,000 in the aggregate."

3. The date of the judgment of the Court of Appeals of Maryland sought to be reviewed is May 17, 1947, being the date of the issuing by that Court of its mandate in this case. The date of the filing of the opinion of the Court of Appeals of Maryland is April 17, 1947. The date the application for appeal to the Supreme Court of the United States is presented is July 11th, 1947.

4. The jurisdictional provisions relied on, Judicial Code, Section 237(a), as amended (January 31, 1928, c. 14, Sec. 1, 45 Stat. 54), confer jurisdiction on the Supreme Court of the United States to review upon appeal the judgment of the Court of Appeals of Maryland because the case involves, and the controlling question in it is, the constitutional validity of a statute, above quoted, of Maryland, Article 101, Section 48(3), Code of Public General Laws of Maryland, 1939, as amended by judicial interpretation and applied and enforced in this case by the Court of Appeals,

the highest Court of Maryland. The ruling of the Court of Appeals of Maryland, and its decision and judgment, were in favor of the validity of the statute as construed. In those circumstances the Supreme Court of the United States has jurisdiction on appeal. *Standard Oil Co. of California* v. *Johnson*, 316 U. S. 481, *Bountiful Brick Co.* v. *Giles*, 276 U. S. 154, *Cudahy Packing Co.* v. *Parramore*, 263 U. S. 418, *Fiske* v. *Kansas*, 274 U. S. 380, *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, *New York Cent. R. Co.* v. *Bianc*, 250 U. S. 596, *Arizona Copper Co.* v. *Hammer*, 250 U. S. 400.

5. Appellant's contention and claim that the "other cases" provision of the Workmen's Compensation Act of Maryland, as amended by judicial interpretation and applied and enforced in this case, is repugnant to the 14th Amendment to the Federal Constitution for the reasons that, under the statute as construed, the Commission is given unlimited authority and discretion to allow compensation, in an amount less than that required by the provision to be paid, without any prescribed guide, rule, basis or standard reasonably adapted to produce a fair result, and is also given unbridled and definitive discretion to accord claimants discriminatory treatment, involve substantial questions, because appellant's right to adequate and reasonable compensation for his conceded permanent disability depends entirely upon whether the statute may constitutionally be construed and judicially amended in a manner calculated to deprive him of compensation to which the statute as enacted expressly, clearly and unequivocally entitles him. The questions are substantial, moreover, because they arise upon a claim of unconstitutionality which the Supreme Court of the United States in previous decisions has recognized as substantial and valid in applying the principles, here seasonably invoked by appellant, that

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it is violative of due process of law, as well as the equal protection of the laws, for a statute to delegate to an administrative body unlimited discretion and authority unless they are reasonably restricted by legislative imposed standards wherewith to govern them (*Schechter Poultry Corp.* v. *United States,* 295 U. S. 495, *Panama Refining Co.* v. *Ryan,* 293 U. S. 398, *Missouri, ex rel Gaines* v. *Canada, Registrar,* 305 U. S. 337).

6. The Federal questions sought to be reviewed were initially raised by written and oral statements of appellant filed in and made to the Court of Common Pleas of Baltimore City, the court of first instance, after the filing of a motion by appellees to dismiss appellant's appeal to that Court (as authorized by Article 101, Section 70, Code of Public General Laws of Maryland, 1939) from the decision of the State Industrial Accident Commission of Maryland. Under the decision of the Commission, appellant, who was found to have sustained an accidental injury arising out of and in the course of his employment by Bethlehem-Fairfield Shipyard, Incorporated, on March 28, 1945, was awarded compensation for permanent partial disability to his back, resulting from his injury, at the rate of $18 a week for 41⅔ weeks, not to exceed, however, the sum of $750, under the "other cases" provision of the Act. Pending the trial in the Court of Common Pleas of Baltimore City of the appeal from the Commission, the Court of Appeals of Maryland filed its opinion in the case of *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc.,* 47 A. 2d 365, in which it held that, in a case compensable under the "other cases" provision of the Act, the Commission had the right in its discretion to limit the amount of compensation to a sum less than the amount required to be paid by that provision, and that if the payments were awarded at the maximum weekly rate stated therein, no appeal would lie from the Commission's

decision. Excerpts from the opinion of the Court of Appeals of Maryland in the *Townsend* case, showing wherein it amended by judicial interpretation the "other cases" provision of the Act, are quoted *supra* in this statement at pages 3-4.

7. Thereupon the employer and its insurer, Maryland Casualty Company, moved in writing in the Court of Common Pleas of Baltimore City to dismiss appellant's appeal from the Commission upon the grounds that under the facts of this case no issue as to an amount was authorized, permitted or allowed by the Act to be submitted to the jury, that the award of the Commission was not appealable by appellant as he was awarded compensation by the Commission at the maximum rate allowed by the Act, and that the Court of Common Pleas of Baltimore City was without jurisdiction to hear the appeal taken by appellant in this case.

8. Thereafter, the matter of the motion to dismiss appellant's appeal from the Commission to the Court of Common Pleas of Baltimore City came on to be heard, and, after argument, was held *sub curia*. At that time appellant filed in writing in that Court a motion requesting the Court to rule as a matter of law that the decision of the Commission was erroneous under the "other cases" provision of the Act which required compensation to be paid during the continuance of the disability, but not to exceed $3,000, and requesting the trial Court to reverse the decision of the Commission and to direct that body to make a decision and pass an award in compliance with the language of the "other cases" provision of the Act. The trial Court denied that motion upon the authority of the holding of the Court of Appeals of Maryland in the *Townsend* case.

9. Appellant, who had theretofore filed issues of fact in the Court of Common Pleas for submission to a jury on the

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appeal for the purpose of determining whether he was entitled to more compensation for his disability than awarded by the Commission, then filed substituted issues of fact to submit the questions whether, as a result of his accidental injury, he had sustained permanent partial disability to any of his arms or legs, and, if so, what fractional part thereof he had permanently lost. Subsequently, appellees withdrew issues of fact they had previously filed in the case and, at the same time, excepted to appellant's substituted issues.

10. The trial Court then denied the motion of appellees to dismiss appellant's appeal from the Commission to the Court of Common Pleas of Baltimore City, but thereafter sustained the exceptions of appellees to appellant's substituted issues, with leave to appellant to file amended or additional issues in five days.

11. Whereupon, both in writing and orally in open Court, appellant stated and submitted to the trial Court that one of the purposes of his appeal to it from the decision of the Commission was to have reviewed the allowance to him of only $750 as compensation for his permanent partial disability, it being his contention, as so stated, that under the facts relating to his injury and ensuing disability he was entitled for his compensation to a sum of money in excess of the amount so awarded. Further, that it was also a purpose of his appeal to challenge the right of the Commission to limit the amount of the award to $750, because it was his contention, as he further stated, that under the "other cases" provision of the Act the Commission had no right to so limit the award to any specific number of weeks but was, by virtue of the language of the provision, required to pass an award in accordance with its terms, *i. e.*, "payable during the continuance of such partial disability, but not to exceed three thousand dollars, and, subject to reconsideration of

the degree of such impairment by the Commission on its own motion or upon application of any party in interest."

12. Further, both in said writing and orally in open Court, appellant stated, submitted and contended:

> "That it is also his purpose in taking an appeal from the decision of the Commission to challenge the constitutional validity of the sub-section as interpreted, applied and enforced by the Commission under the approval and sanction of the Court of Appeals, because under the facts in this case the application and enforcement of the sub-section as so interpreted is arbitrary, capricious and fundamentally unjust, and violates the 14th Amendment to the Constitution of the United States and the 23rd Article of the Declaration of Rights of Maryland."

Appellant stated and submitted, in addition, that as he was unable to prepare other issues which would submit to a jury the question of his disability, he requested the trial Court to enter such judgment as it thought proper.

13. The trial Court thereupon denied the several contentions of appellant and entered judgment affirming the decision of the Commission. From that judgment, appellant appealed to the Court of Appeals of Maryland.

14. In the Court of Appeals of Maryland the Federal questions sought to be reviewed were raised in the customary manner in appellant's printed brief filed in that Court and in the oral argument of his counsel to the Court of Appeals. In appellant's printed brief (p. 7), it was stated that the federal questions were the same as those presented in the two preceding cases, *Allen* v. *Glenn L. Martin Co.*, No. 100, and *Hyman* v. *Tyler*, No. 101, October Term, 1946, which were argued to and decided by the Court of Appeals together with this case, in both of which cases the federal questions were submitted as follows:

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"III. May an administrative body constitutionally be given unlimited authority and discretion to allow compensation for permanent partial disability, under the 'other cases' provision of the Act, to an injured employee, within a certain maximum, without some prescribed guide, rule, basis or standard reasonably adapted to produce a fair result, when said administrative body, in construing and applying the authority and discretion granted it does not allow compensation to injured employees in such manner as reasonably to compensate them for the disabilities sustained?

"It is the appellant's intention, by this contention, to present and preserve the question of whether the 'other cases' provision of the statute, as construed and applied, is valid under the provisions of the 14th Amendment to the Constitution of the United States, and also under the provisions of the 23rd Article of the Declaration of Rights of Maryland."

15. In its opinion and decision sustaining the constitutional validity of the "other cases" provision of the Act, as it was construing and interpreting it, the Court of Appeals of Maryland referred to its discussion of the matter in *Allen* v. *Glenn L. Martin Co.*, decided the same day as this case, wherein that Court said (52 A. 2d at pp. 606, 608):

"The decision of this Court in the case of *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc.*, Md., 47 A. 2d 365, having been filed, the appellees filed in the Baltimore City Court a motion to dismiss appellant's appeal, to which motion appellant answered. • • • Appellant contends • • • (3) that the 'other cases' provision of the statute as interpreted by the decision of this Court in the case of *Townsend* v. *Bethlehem-Fairfield Shipyard, Inc., supra,* is unconstitutional.

"• • • He argues here that to limit it (the number of weeks) otherwise is unconstitutional, in that there is a deprivation to the appellant without due process contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States

and of the Twenty-third Article of the Declaration of Rights of Maryland, because the 'other cases' paragraph, as construed, sets up no valid guide or standard whereby a lesser amount may be determined. * * * However, the contention that the statute is unconstitutional is without merit."

16. The Court of Appeals of Maryland further found no error in the trial Court's ruling sustaining the exceptions of appellees to appellant's substituted issues, in refusing to rule that the decision of the Commission was erroneous and in refusing to reverse it, and in affirming the decision of the Commission, and the Court of Appeals of Maryland, in turn, affirmed the judgment of the Court of Common Pleas of Baltimore City. The mandate of the Court of Appeals of Maryland is dated May 17, 1947, and was issued and sent to the trial Court, the Court of Common Pleas of Baltimore City, on May 17, 1947. The judgment of the Court of Appeals of Maryland, embodied in its opinion, decision and mandate, is a final judgment.

17. A copy of the opinion of the Court of Appeals of Maryland is hereto appended.

PAUL BERMAN,
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Attorneys for Appellant.

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APPENDIX

COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1946

No. 102

BENONI

v.

BETHLEHEM FAIRFIELD SHIPYARD, INC., ET AL.

Before Marbury, C. J., and Delaplaine, Collins, Grason, Henderson and Markell, JJ.

COLLINS, *Judge:*

The Claimant, appellant, James Benoni, on March 28, 1945, while working for the Bethlehem Fairfield Shipyard, Inc., and earning an average weekly wage of $75.88, was injured as a result of a load of bricks falling on him. A claim was filed before the State Industrial Accident Commission and a hearing was held on June 19, 1945, to determine the nature and extent of his disability. At the hearing the appellant appeared and testified. The appellant offered in evidence the report of his examination made by Dr. Robert W. Johnson, Jr., at the instance of his attorney. The report of Dr. Robert E. Chenowith was also offered. These reports were considered by the Commission, but by agreement of counsel were not to be used in case of appeal. The Commission, on June 26, 1945, ordered that the Bethlehem Fairfield Shipyard, Inc., employer, and the Maryland Casualty Company, insurer, appellees here, pay unto James Benoni, claimant, appellant here, compensation for permanent partial disability at the rate of $18 per week, payable weekly, for the period of 41⅔ weeks, not to exceed the sum of $750 under "Other Cases." From that award the appellant appealed to the Court of Common Pleas of Baltimore City.

After the filing of the decision of this Court in the case of *Townsend* v. *Bethlehem Fairfield Shipyard, Inc.*, Md., 47 A. 2d 365, hereinafter referred to in this opinion as the Townsend case, the appellees filed a motion to dismiss the

appeal. The appellant then filed a motion requesting the Court to reverse the decision of the Commission, and on the same day filed eight substituted issues. The purpose of these amended or substituted issues was to have a jury determine if the appellant had suffered any disability to any of his extremities, on the theory that as a result of the permanent disability to his back, he had permanently lost a part of the use of each arm and leg. The trial Judge denied the appellees' motion to dismiss the appeal and he sustained the appellees' exceptions to appellant's substituted issues and allowed the appellant five days to file additional amended issues. After the five days had expired, the appellant stated to the Court in writing that he was unable to prepare other issues which would submit to a jury the question of the extent of his permanent partial disability. The appellant also, by his written statement, raised the constitutionality of the "Other Cases" provision of the statute as interpreted by this Court in the *Townsend case, supra.* The Trial Judge thereupon entered judgment affirming the decision of the State Industrial Accident Commission and for costs. From that judgment the appellant appeals here.

The appellant contends (1) that the Court was in error in sustaining appellees' exceptions to appellant's substituted issues; (2) that the Commission may not validly make a decision limiting the award of compensation in cases of permanent partial disability to the sum of $750 under "Other Cases"; or to any amount less than $3,000; (3) that the interpretation of the "Other Cases" section in the Workmen's Compensation Act, Code Supp. 1943, Art. 101, § 48, is unconstitutional as interpreted by this Court in the *Townsend case, supra.*

(1) The Trial Judge was clearly correct in refusing to submit these substituted issues to the jury, as no questions regarding such injuries were submitted to or passed upon by the State Industrial Accident Commission. It has been heretofore held by this Court that the State Industrial Accident Commission should have an opportunity to pass upon claims in the first instance and that this Court should not aid in any attempt to circumvent the State Industrial Acci-

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dent Commission in order to make the Courts the tribunal of first instance. The Legislature did not intend to enable a claimant at his mere whim to impose the duties of administrative officers upon the Courts. *Oxford Cabinet Company* v. *Parks*, 179 Md. 680, 683, 22 A. 2d 481; *Hathcock* v. *Loftin*, 179 Md. 676, 678, 22 A. 2d 479.

(2) This Court has decided many times that the Commission may validly make a final decision limiting the amount of the award for permanent partial disability under "Other Cases" to less than the maximum of $3,000. *Townsend case, supra; Allen v. Glenn L. Martin Co. and Globe Indemnity Company*, Md., 52 A. 2d 605; *Hyman v. Tyler and Eagle Indemnity Company*, Md., 52 A. 2d 610, No. 101, October Term, 1946, filed herewith.

(3) This court in the two previous cases, *Allen v. Glenn L. Martin Co., & Globe Indemnity Co., supra, and Hyman v. Tyler & Eagle Indemnity Co., supra,* passed upon the question of constitutionality here presented, and held the section constitutional and it is not necessary that we further elaborate on that point here. The judgment of the Trial Judge will therefore be affirmed.

Judgment affirmed, with costs.